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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: AUG 07 2008
SRC 05 070 51023

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as an assistant professor. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a statement. For the reasons discussed below, we find that the petitioner has not overcome the director's basis of denial.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Ph.D. in Mathematics from the University of Ottawa. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary

merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The director did not contest that the petitioner works in an area of intrinsic merit, education, and we find that he does. In the request for additional evidence, the director questioned whether the proposed benefits of the beneficiary's occupation, assistant professor at a community college, would be national in scope. In response, the petitioner asserted that his students are mobile people and that math education will prepare them for jobs anywhere in the country. The petitioner further notes that his work will not have an adverse impact on other regions. *Matter of New York State Dep't of Transp.* 22 I&N Dec. 217, n. 7 provides:

> For instance, pro bono legal services as a whole serve the national interest, but the impact of an individual attorney working pro bono would be so attenuated at the national level as to be negligible. Similarly, *while education is in the national interest, the impact of a single schoolteacher in one elementary school would not be in the national interest for purposes of waiving the job offer requirement of section*

> *203(b)(2)(B) of the Act.* As another example, while nutrition has obvious intrinsic value, the work of one cook in one restaurant could not be considered sufficiently in the national interest for purposes of this provision of the Act.

(Emphasis added.) The petitioner submitted documents, such as presidential speeches, attesting to the importance of community colleges in training the U.S. workforce and the importance of well-trained math and science teachers in general. We have already acknowledged above, however, that the petitioner works in an area of intrinsic merit.

Initially, the petitioner asserted that his employer, San Antonio College, is one of nine community colleges in the nation, and the only community college in Texas, selected to establish a pilot program to support low-income underrepresented students to attain high-tech degrees. He submitted a press release in support of this assertion. The petitioner also submitted evidence that he has designed online computer courses. Finally, the petitioner submitted e-mail messages from former students now continuing their education at universities around the United States.

While we acknowledge that any given teacher's students have the potential to continue their studies or work across the country and, presumably, the world, we are not persuaded that this potential is sufficient to consider the proposed benefits of a teacher's work as national in scope. The record lacks evidence that the petitioner will be designing online or in-class courses for use by other community colleges nationwide or that he will be otherwise influencing math education beyond San Antonio, Texas. Thus, we are not persuaded that the proposed benefits of his work will be national in scope.

It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. Initially and in response to the director's request for additional evidence, the petitioner asserted that attracting highly trained educators is a priority, noting that a labor certification to employ an alien as a college or university teacher requires a lesser showing before the Department of Labor (DOL).[1] The director determined that while the record may establish the national importance of assistant professors at community colleges in general and the petitioner's qualifications for the job, the petitioner had not established that the benefits of his skills outweigh the national interest inherent in the labor certification process. On appeal, the petitioner asserts that his Ph.D. places him above other community college professors. The petitioner further asserts that while his employer has granted him tenure, it will not pursue labor certification on his behalf. Thus, he concludes, the approval of the petition may cost one U.S. worker a job but will have a net benefit because the petitioner is more qualified to train future workers.

The fact that teaching at colleges or universities is an occupation designated by DOL for special handling merely demonstrates that a mechanism already exists through DOL to address the national

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[1] In support of this assertion, the petitioner submitted the instructions for the labor certification application. *Compare* 20 C.F.R. § 656.3 (definition of "labor certification") *with* 20 C.F.R. § 656.21a(a)(1)(A)(iii)(*2*).

interest of attracting highly trained educators by seeking labor certification for an occupation designated for special handling. This matter is not before DOL. Citizenship and Immigration Services (CIS) regulations make no such distinction for educators.

It is the position of CIS to grant national interest waivers on a case-by-case basis, rather than to establish blanket waivers for entire fields of specialization, such as assistant professors with doctoral degrees at community colleges. *See generally Matter of New York State Dep't of Transp.*, 22 I&N Dec at 217. We note that Congress is capable of creating blanket waivers for certain occupations, such as physicians working in underserved areas. *See* section 203(b)(2)(B)(ii) of the Act. Congress has not passed a similar law providing a blanket waiver for faculty at community colleges holding doctoral degrees. The policy of the petitioner's employer not to pursue labor certification on behalf of the petitioner, despite granting him tenure, does not obligate CIS to waive that process in the national interest. Even the inapplicability or unavailability of a labor certification cannot be viewed as sufficient cause for a national interest waiver; the petitioner still must demonstrate that the self-employed alien will serve the national interest to a substantially greater degree than do others in the same field. *Matter of New York State Dep't of Transp.*, 22 I&N Dec. at 218, n. 5.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6.

The petitioner has submitted several letters from other faculty at San Antonio College affirming his qualifications for the job and his teaching skills. Some of the references assert that he is one of the few qualified math professors also qualified to teach computer science courses. The petitioner also submitted favorable evaluations, favorable classroom observation reports, two abstracts prepared by his students, evidence that he received an extra stipend for developing two Internet courses and a letter approving him for continuous tenure status four months after the date of filing. None of this evidence indicates that the petitioner has influenced his field of math and computer science education beyond San Antonio College. For example, the petitioner has not submitted evidence that he has published any articles on teaching math or computer science, that he has influenced the development of Internet courses for colleges around the United States or that he serves on any national committees designed to set math or computer science education standards. Thus, the petitioner has not established a track record of success with some degree of influence on the field of math or computer science education as a whole.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job

offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.